



**US Army Corps
Of Engineers**

Headquarters

News Release

**For Release:
Immediate**

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Advisory: The public can view hard copies of the Nationwide Permit proposal documents by contacting the Honolulu District's Regulatory Office. The point of contact is Ms. Lolly Silva at 438-7023.

U.S. Army Corps of Engineers Prepares to Reissue Nationwide Permits, Seeks Public Comment

WASHINGTON, D.C., (August 8, 2001) – The U.S. Army Corps of Engineers (Corps) publishes tomorrow in the *Federal Register* a proposal to reissue nationwide permits (NWP). Nationwide permits authorize discharges of dredge and fill material to waters of the U.S. for activities with minimal environmental impacts. The Corps will propose to increase environmental protection for some activities, such as discharges associated with coal mining and projects within a floodplain. The protective acreage thresholds established in June 2000 for the NWP 26 replacement permits will be maintained, but several refinements are included that will allow greater targeting of Corps resources to projects with significant potential for environmental impact. In addition, several provisions have been simplified to foster improved compliance. The revised permits are the result of extensive consultation with the Environmental Protection Agency and other Federal agencies. The full text of the proposed changes will be posted at http://www.access.gpo.gov/su_docs/aces/aces140.html.

The Corps seeks the public's input on these proposed permits; the proposal is open for public comment for 45 days. The Corps will hold a public hearing on the proposed changes in Washington, D.C. on Sept. 12, 2001, from 1-5 p.m. The hearing will be in the 7th floor auditorium of the GAO Building, 441 G. St., NW, accessible from the Metrorail Judiciary Square stop (red line) or Gallery Place (yellow line).

"The revised permits will do a better job of protecting aquatic ecosystems while helping the regulated public with clearer, simpler language," said John Studt, Chief of the U.S. Army Corps of Engineers Regulatory Branch. Nationwide permits are general permits that authorize categories of activities which the Corps has determined will have minimal impacts on the aquatic environment, individually and cumulatively, when conducted in accordance with the permit conditions. However, the Corps will continue to require an individual permit for any project, whether covered by a general permit or not, which it determines would have more than minimal environmental impact.

In a related action, the Corps released on Tuesday, July 31 a draft Programmatic Environmental Impact Statement (PEIS) for the Nationwide Permit Program. The draft PEIS is the culmination of several years of study and provides extensive data on the current program as well as an in-depth analysis of several programmatic alternatives to the program. The Corps is releasing the draft PEIS for public comment at the same time as the proposed permit renewals in order to facilitate informed comment on both. The

public comment period for the draft PEIS is open until September 14, 2001. The draft PEIS can be downloaded from the Corps Institute for Water Resources at <http://www.iwr.usace.army.mil/iwr/regulatory/regulintro.html>

The following is a summary of changes to the Nationwide Permits:

- For NWP 21, relating to Surface Coal Mining – The proposed permit includes two changes designed to increase protection of the aquatic environment. The first enhances the mitigation requirements associated with the use of this permit. It clarifies that Corps Districts will require full mitigation to offset any impacts of discharges to waters of the United States, even though this may include mitigation beyond what is required by the State under the project's coal mining permit. Second, the Corps will require case-by-case review of all projects seeking to use this permit to ensure that any adverse effects of the permitted activity are no more than minimal, both individually and cumulatively.
- For all Nationwide Permits – The Corps is proposing to require compliance with FEMA approved state and local floodplain management requirements for any authorized projects located in the 100 year floodplain. (Note that the prohibition on use of NWPs 39, 40, 42, 43, and 44 in the floodplain below the headwaters is maintained.)
- For NWP 31, relating to Maintenance of Existing Flood Control Facilities – The Corps recognizes the cyclic growth of vegetation in flood control channels and proposes to require appropriate mitigation up front, as part of an approved maintenance plan. The changes also simplify the provisions for use of the permit during emergencies.
- For NWPs 39, 40, 42 and 43, relating to Residential, Commercial, Institutional Developments (39), Agriculture Activities (40), Recreational (42) and Stormwater Management facilities (43) – The Corps proposes to maintain the protective acreage limits established in June 2000. The Corps will also maintain the prohibition on impacts exceeding 300-linear feet of a watercourse, except in cases where the Corps determines and documents that those impacts will be minimal, in which case a project-specific waiver would be allowed. This proposed waiver could only be used where the watercourse is small and has low aquatic functions. It is needed however, to allow the Corps to determine at a local level which stream impacts are minimal and which warrant the increased scrutiny and resource commitment of an individual permit.
- For Nationwide Permit (NWP) 14, which relates to Linear Transportation Crossings – The Corps is proposing to standardize acreage limits for both public and private applicants as follows: a maximum of 1/2-acre of impacts to non-tidal wetlands, and 1/3-acre of impacts to tidal wetlands.
- For NWP 27, regarding Wetland and Riparian Restoration and Creation – The Corps proposes to simplify four land categories into three. The two provisions; (a)(2) *Any Federal land* and (a)(4) *Any private or public land* will be listed as provision (a)(3) *Any other public, private or tribal land*.
- For NWP 37, pertaining to Emergency Watershed Protection – The Corps proposes including activities of the Department of Interior's Wildland Fire Management Burned Area Emergency Stabilization and Rehabilitation Program within the scope of the permit upon the agency's request.
- For NWP 39, relating to Residential, Commercial and Institutional Developments – The Corps proposes simplifying the subdivision provision to clarify that the 1/2-acre limit on wetland impacts is applied once to the entire subdivision, including all infrastructure and all individual lots. The Corps

is also proposing to allow, on a case-by-case basis, impacts to streams below the 1 cfs flow point, as long as these impacts are minimal.

- For NWP 42, relating to Recreation – The Corps requests suggestions regarding criteria, standards and best management practices relating to NWPs for recreation facilities.
- For General Condition 19, relating to Mitigation – The Corps is proposing to increase flexibility to allow the most environmentally appropriate type of mitigation. The revision is intended in particular to focus attention on the need for strong stream protection measures, such as the use of vegetated buffers. While the presumption that wetlands impacts will be mitigated one-for-one is maintained, the revised permit provides flexibility to require other types of mitigation where appropriate to the particular ecosystem being affected.

NWPs are general permits used nationally to authorize discharges of dredged or fill material that will have minimal impact to the aquatic environment. Corps regulators issue two types of permits: individual permits and general permits. Individual permits, requiring public notice, pertain to individual situations with potentially substantial impacts, and are issued on a project-specific basis. General permits pertain to a group of similar activities, such as boat docks or shore protection, that are determined to have minimal impacts on the aquatic environment, both individually and cumulatively, and can apply regionally or nationwide. NWPs are issued by Corps headquarters but individual projects are authorized under the NWPs by Corps district offices.

The Corps introduced the first NWPs in 1977. Most of these NWPs authorized certain categories of activities (e.g., aids to navigation, structures in artificial canals, repair and maintenance, utility line crossings, bank stabilization, minor road crossings, etc.) on a national basis. Also in 1977, the Corps began issuing permits for activities in headwater and isolated waters. At the same time, the Corps issued NWPs that authorized fills into these newly regulated waters under certain conditions. In 1984, the Corps reissued these headwater and isolated water NWPs as NWP 26 and limited fills to less than 10 acres. In 1996 and 2000, the Corps took two significant steps to further protect the aquatic environment, first by reducing the NWP 26 threshold from 10 to 3 acres in 1996, and then by replacing NWP 26 in 2000, with five new NWPs that lowered the thresholds from 3 to ½ acre. The purpose of these changes was to improve environmental protection and ensure compliance with Section 404(e) of the Clean Water Act.

For more information on the U.S. Army Corps of Engineers Regulatory Program, visit the program's web page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.